

APPEAL NO. 171955  
FILED OCTOBER 17, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 29, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ).<sup>1</sup> The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to a left talus fracture; (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. E) on November 9, 2016, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the appellant/cross-respondent (claimant) reached MMI on August 26, 2016; and (4) the claimant's IR is one percent.

The claimant appealed the ALJ's determination that the compensable injury of (date of injury), does not extend to a left talus fracture. The claimant contends that the evidence established that the compensable injury of (date of injury), extends to a left talus fracture. The respondent/cross-appellant (carrier) also appealed the extent-of-injury determination, noting that the ALJ made conflicting findings of fact and that her conclusion of law regarding extent of injury is inconsistent with the decision. The carrier contends that based on the ALJ's discussion she did not intend to find that the compensable injury extends to a left talus fracture, so those findings and conclusions which state the injury extends to a left talus fracture are incorrect.

The ALJ's determinations that the first certification of MMI and assigned IR from Dr. E on November 9, 2016, became final under Section 408.123 and Rule 130.12; the claimant reached MMI on August 26, 2016; and the claimant's IR is one percent were not appealed and became final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury); the first certification of MMI and assigned IR from Dr. E on November 9, 2016, became final under Section 408.123 and Rule 130.12; the claimant's date of MMI is August 26, 2016; the claimant's IR is one percent; and that Dr. E was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine extent of injury. The claimant testified that he was injured when he was hit by a forklift.

---

<sup>1</sup> Section 410.152 was amended in H.B. 2111, 2017 Leg., 85th Sess. (Tex. 2017), effective September 1, 2017, changing the title of hearing officer to ALJ.

Dr. E examined the claimant on October 21, 2016, in part, to opine on whether the compensable injury extends to a left talus fracture. In her narrative report, Dr. E specifies the mechanism of injury in some detail and discusses her review of the claimant's medical records. In her discussion of the evidence, the ALJ stated that Dr. E did not indicate how or why the (date of injury), injury event caused the disputed left talus fracture. However, we note that in her narrative report, Dr. E stated that the description of the injury is consistent in the medical records reviewed and that the claimant stated he was struck by a forklift in a warehouse and experienced pain in his left ankle as he attempted to turn to jump away from the forklift which caught his foot. Dr. E went on to state that the forces from both the impact and the torsion caused the structural damage to the claimant's left ankle in the talus region.

In Finding of Fact No. 3, the ALJ found that the preponderance of the other medical evidence is not contrary to the determination of Dr. E that the compensable injury of (date of injury), extends to a left talus fracture. In Finding of Fact No. 4, the ALJ found that the disputed left talus fracture was not caused, worsened, enhanced, or accelerated by the mechanism of injury, and is not a naturally flowing consequence of the compensable injury of (date of injury). In Conclusion of Law No. 3, the ALJ determined that the compensable injury of (date of injury), does extend to a left talus fracture. However, in the decision the ALJ determined that the compensable injury of (date of injury), does not extend to a left talus fracture. The ALJ made conflicting and inconsistent findings and determinations on the extent-of-injury issue. Accordingly, we reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a left talus fracture and remand the extent-of-injury issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to determine whether the compensable injury of (date of injury), extends to a left talus fracture which is consistent and supported by the evidence.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

K. Eugene Kraft  
Appeals Judge

---

Carisa Space-Beam  
Appeals Judge